

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

**RLI INSURANCE COMPANY, et al.**

**CASE NO. 1:17-cv-491**

**Plaintiffs,**

**Judge Susan J. Dlott**

**Magistrate Judge Stephanie K. Bowman**

**v.**

**WESTFIELD**

**Defendant.**

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**MOTION FOR ATTORNEY'S FEES AND COSTS OF PLAINTIFFS**

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Pursuant to Fed. R. Civ. P. 54(d) and S.D. Ohio Civ. R. 54.2(a), Plaintiffs, RLI Insurance Company and Cassidy Turley, moves this Court for an award of attorney's fees and costs in connection with filing and prosecuting a declaratory judgment action seeking an Order that Westfield owed a primary duty to defend and indemnify Cassidy Turley. Plaintiffs also request an Order awarding attorney's fees and costs for the defense of Cassidy Turley in the underlying state court action for the cost of defense after the defense of Cassidy Turley was tendered to Westfield on February 10, 2017.

Respectfully submitted,

GARVEY | SHEARER | NORDSTROM, PSC

**/s/Jennifer K. Nordstrom**

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**MEMORANDUM**

This Court granted the Motion for Declaratory Judgment of RLI Insurance Company, and specifically, declared that Defendant, Westfield, owed Plaintiff, Cassidy Turley, a defense and indemnification for the claims asserted in the personal injury case pending in the Hamilton County Ohio Court of Common Pleas *Heather Everett vs. Cincy Office Properties Inc., et al.*, Case No. A 1405220 from the date the claim was tendered on February 10, 2017 forward. (Doc. 23 and Doc. 24). The Court further declared that Plaintiffs are entitled to an award of attorney's fees and costs in connection with filing and prosecuting the declaratory judgment action. (Doc. 23 and Doc. 24).

Ohio Rev. Code § 2721.16 authorizes this Court to make an award of attorney's fees (A)(1)(b) authorizes this Court to award attorney's fees when the tender of defense was wrongful. Further, *Motorists Mutual Insurance Company v. Trainor*, 33 Ohio St. 2d 41, 47 (1973) determined, policyholders may recover attorneys' fees when they must litigate with their insurers to enforce policy rights. In its decision, this Court awarded the cost of prosecuting the declaratory judgment action, (Doc. 23 and Doc. 24). The cost of prosecuting this declaratory judgment action was \$7,541 plus the cost of this motion, which counsel estimates will be approximately \$600. See Affidavit of Christopher Schmidt at ¶ 7 (Doc. 27). An itemized invoice has been provided to counsel for Westfield.

Plaintiffs, RLI Insurance Company and Cassidy Turley, also request this Court award the attorney's fees and costs it incurred to defend the claims asserted in Hamilton County Ohio Court of Common Pleas *Heather Everett vs. Cincy Office Properties Inc., et al.*, Case No. A 1405220 *after* the defense of Cassidy Turley was tendered to Westfield on February 10, 2017 and Westfield had a clear duty to defend and indemnify as previously determined by this Court. The attorney's fees and expenses incurred by Cassidy Turley to defend the claims asserted in *Heather Everett vs.*

*Cincy Office Properties Inc., et al.* is \$24,295.56. See Affidavit of Christopher Schmidt at ¶¶ 3 through 6 (Doc. 27).

Based on the foregoing, Plaintiffs, RLI Insurance Company and Cassidy Turley, request an Order that Westfield Insurance Company pay attorney's fees to RLI Insurance Company, Cassidy Turley, and their counsel in the amount of \$24,295.56 for defense costs in the State Court action of *Heather Everett vs. Cincy Office Properties Inc., et al.* following the tender of defense and for \$7,541 for the costs to prosecute the declaratory judgment action.

Respectfully submitted,

GARVEY | SHEARER | NORDSTROM, PSC

/s/Jennifer K. Nordstrom

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**CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the above document was served by CM/ECF system and by electronic mail on this 26th day of June, 2018, upon the following:

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